



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bills 447 and 448 (as introduced 4-25-07)
Sponsor: Senator Cameron S. Brown
Committee: Agriculture

Date Completed: 5-16-07

CONTENT

The bills would amend Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Require the owner or operator of a large concentrated animal feeding operation (CAFO), under certain circumstances, to obtain a mechanism of financial assurance of \$100,000 that was accessible by the Department of Environmental Quality (DEQ) to remediate any environmental harm caused by a violation of a permit under Part 31.**
- Allow the DEQ to require a financial assurance mechanism of up to \$1.0 million for a large CAFO with a history of violations.**
- Prohibit the owner or operator of a large CAFO that violated Part 31 from increasing the number of animals at the CAFO.**
- Prohibit the DEQ from modifying or reissuing a permit, or issuing a new permit, for that CAFO until the owner or operator had conducted any necessary remediation, was in compliance with the Act, and had obtained a required mechanism of financial assurance.**
- Permit the court to revoke a permit held by the owner or operator of the CAFO, or order the owner or operator to comply with the terms of the permit.**

The two bills are tie-barred to each other, and are described in detail below.

Senate Bill 447

Part 31 prohibits a person from discharging any waste or waste effluent into the waters of the State unless the person has a valid permit from the DEQ. To maintain a valid permit, the permittee must meet the effluent requirements that the DEQ considers necessary to prevent unlawful pollution and to assure compliance with applicable Federal law and regulations. Violators of the part are subject to civil and criminal penalties.

Under the bill, if the owner or operator of a large CAFO were convicted of a violation of Part 31 or found responsible for a civil violation of the part by a court, then the owner or operator could not increase the number of animal units at the CAFO.

In addition, the DEQ could not modify or reissue a permit or issue a new permit to the owner or operator unless all of the following conditions were met:

- The owner or operator had complied fully with the court's requirements to conduct any necessary remediation due to the violation.
- The owner or operator was in compliance with NREPA and the rules promulgated under the Act.
- The owner or operator was in compliance with the requirement to obtain a mechanism of financial assurance.

Beginning October 1, 2007, the bill would require the following people to obtain a mechanism of financial assurance, to the satisfaction of the DEQ, equal to \$100,000 that the Department could gain access to if necessary to remediate any environmental harm caused by a violation of a permit issued under Part 31:

- The owner or operator of a new large CAFO.
- The owner or operator of a permitted large CAFO that had been convicted of a violation of Part 31 or found responsible by a court for a civil violation of the part.
- The owner or operator of a large CAFO that was not in compliance with generally accepted agricultural and management practices for site selection and odor controls, as determined by the Department of Agriculture under the Michigan Right to Farm Act.

The DEQ could require a mechanism of financial assurance in an amount greater than \$100,000, but not more than \$1.0 million, if it determined that a higher amount was necessary based on a history of violations by the owner or operator or at the large CAFO.

Senate Bill 448

Under the bill, in addition to any other penalty or remedy provided under Part 31, if the owner or operator of a large CAFO were convicted of a criminal violation or found responsible for a civil violation of Part 31, the court could revoke a permit held by the owner or operator, or could order the owner or operator to comply with the terms of the permit. A permit that was revoked or was subject to an order under these provisions could not be reissued or modified except in compliance with Section 3112 of NREPA (which Senate Bill 447 would amend).

The bill would define "large CAFO" as that term is defined in R 323.2103 of the Michigan Administrative Code, i.e., an animal feed operation (AFO) that confines at least the number of animals specified in any of the following categories:

- 700 mature dairy cows, whether milked or dry.
- 1,000 veal calves.
- 1,000 cattle other than mature dairy cows or veal calves.
- 2,500 swine each weighing 55 pounds or more.
- 10,000 swine each weighing less than 55 pounds.
- 500 horses.
- 10,000 sheep or lambs.
- 55,000 turkeys.
- 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system.
- 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system.
- 82,000 laying hens, if the AFO uses other than a liquid manure handling system.
- 30,000 ducks, if the AFO uses other than a liquid manure handling system.
- 5,000 ducks, if the AFO uses a liquid manure handling system.

MCL 324.3112 (S.B. 447)
324.3101 & 324.3115 (S.B. 448)

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bills would result in additional responsibilities for the DEQ, mainly related to the implementation of financial assurance mechanisms. Whether the DEQ absorbed these functions with existing staff, or new staff, would be contingent upon future appropriations.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.